

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 1:18-MJ-01581-SCY
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Albuquerque, New Mexico
)	
DOUGLAS D. SMITH,)	Wednesday, May 9, 2018
)	(9:35 a.m. to 9:51 a.m.)
Defendant.)	(10:57 a.m. to 11:02 a.m.)

PRELIMINARY / DETENTION HEARING

BEFORE THE HONORABLE STEVEN C. YARBROUGH,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: JAMES BRAUN, ESQ.
U.S. Attorney's Office
District of New Mexico
P.O. Box 607
Albuquerque, NM 87103

For Defendant: THOMAS B. JAMESON, ESQ.
Office of the Federal Public Defender
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U.S. Probation/Pretrial: S. Day / A. Galaz

Court Reporter: Recorded; Liberty - Rio Grande

Clerk: K. Dapson

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INDEX

<u>GOVERNMENT'S WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
TRAVIS TAYLOR	4	9		

1 Albuquerque, New Mexico; Wednesday, May 9, 2018; 9:35 a.m.

2 (Call to Order)

3 THE CLERK: United States of America versus Douglas
4 Smith.

5 MR. BRAUN: Good morning, Your Honor. James Braun on
6 behalf of the United States.

7 THE COURT: Good morning.

8 MR. JAMESON: Good morning, Your Honor. Tom Jameson.
9 I'm here on behalf of Mr. Smith, who is making his way over.

10 THE COURT: Good morning.

11 MR. JAMESON: Your Honor, I think we're going to be
12 proceeding to a preliminary hearing.

13 THE COURT: That's fine. You can just have a seat
14 right there, Mr. Smith. All right, we were scheduled -- are
15 scheduled today for a preliminary hearing and a detention
16 hearing. Is the Government ready to proceed?

17 MR. BRAUN: Yes, Your Honor.

18 THE COURT: All right. You can go ahead and call
19 your first Witness.

20 MR. BRAUN: United States would call FBI Special
21 Agent Travis Taylor.

22 TRAVIS TAYLOR, GOVERNMENT'S WITNESS, SWORN

23 //

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25 //

1 **DIRECT EXAMINATION**

2 **BY MR. BRAUN:**

3 Q Please state your name.

4 A My name is Travis Taylor.

5 Q How are you employed?

6 A By the FBI as a Special Agent.

7 Q How long have you been a Special Agent with FBI?

8 A Eight months.

9 Q What is your prior Law Enforcement experience?

10 A I was an FBI analyst for three-and-a-half years before
11 that.

12 Q Okay. And where are you stationed?

13 A Santa Fe, Resident Agency (phonetic).

14 Q What is your role in this case of United States versus
15 Douglas Smith?

16 A I am the Case Agent.

17 Q And how are you aware of the facts that are recited in the
18 affidavit you prepared in this case?

19 A On Sunday, the FBI duty agent was notified of the events
20 that occurred on May 5th. There was a complaint.

21 Q Actually, before you go into the facts, if you could just
22 tell the Court how you're aware of all the facts that are in
23 your affidavit.

24 A Through an interview of Douglas Smith that occurred on
25 Monday, as well as an interview that occurred with the

1 Detective of the Espanola Police Department. And that was
2 passed to us.

3 Q And so what is your understanding, based on your
4 investigation and your personal involvement in this case, of
5 what happened with regard to the Defendant on May 5th, 2018?

6 A Would you like me to talk about what -- the events that
7 occurred on May 5th and how --

8 Q Yes.

9 A Okay. So on May 5th, approximately 1:00 a.m., Douglas
10 Smith walked out to his porch to a noise that he heard. At
11 that time, he saw a shadow by his camper trailer, fired a shot
12 to the left of the camper trailer. And the shadow moved to --
13 began to move and run to the left in that direction. And more
14 shots were fired in that direction. Afterward, Douglas Smith
15 walked off his porch, went counterclockwise on the property, so
16 to the left, and identified that there was a human being laying
17 there on the ground; continued to walk to the front of the
18 property. On the way back, a tenant of his identified that
19 there was a -- that he had shot somebody, that he should call
20 911. Douglas Smith called 911. And that is when Espanola
21 Police Officer showed up on scene, detained him, did an
22 investigative sweep, and then was transported to Espanola
23 Station. And that's when the Detective showed up on the scene
24 to collect evidence, which he collected a pistol, a 22
25 Revolver. After evidence collection was conducted, Espanola

1 Detective went back to the station and interviewed --
2 mirandized and interviewed Douglas Smith, in which he gave
3 statements to the events that occurred that night.

4 Q And in that statement, did it recite that facts that you
5 just testified to, as far as shooting towards the figure that
6 night --

7 A Yes, sir.

8 Q -- or that morning?

9 A And then on Monday morning, two agents from the FBI went
10 to Tierra Amarilla Prison to pick up Douglas Smith and bring
11 him to the Santa Fe office to be interviewed by myself and
12 another agent. Approximately 12:30, we re-interviewed Douglas
13 Smith, gave him his advice of rights. He acknowledged he
14 understood his advice of rights and waived them. We continued
15 to interview. He reiterated me the same facts that he had
16 talked to the Espanola Detective about. And in addition, he
17 talked about several incidents like this where he had fired
18 shots at people in his backyard. And then -- and so he also
19 spoke about those incidents and some of the -- two of those
20 incidents being reported to Police, stated there was five
21 incidents total that he could remember at the time, where
22 someone was in his backyard.

23 Q Okay. Based on your investigation, what was the cause of
24 death for the victim?

25 A Per -- I had a conversation with the Detective at

1 Espanola. And he stated that OMI (phonetic) found one gunshot
2 wound to the upper left temple of the victim, a 22-caliber
3 round that was still lodged within -- there was no exit wound,
4 still lodged within the body.

5 Q Okay. And what is your understanding of the Indian status
6 of the victim?

7 A Talked to Santa Clara Governor. Governor verbally
8 confirmed that she is an enrolled member, and that -- confirmed
9 that the land was Santa Clara Pueblo. But I have an
10 outstanding certificate of Indian blood and land status to
11 verify those verbal confirmations by the Governor.

12 Q So that would be part of your ongoing investigation?

13 A Yes, sir.

14 Q Okay. But based on your investigation to date, the victim
15 is an enrolled member of Santa Clara Pueblo?

16 A Yes, sir.

17 Q Is the Defendant an Indian under Federal Law?

18 A I have only seen messages that he was a non-Indian. But
19 in the NCIC reports the -- there was nothing stating race.

20 Q Okay. And do you recognize the Defendant, Douglas Smith,
21 here in the courtroom this morning?

22 A Yes, sir.

23 Q Would you please identify him?

24 A Right there, sir (indicating).

25 Q Okay. In the red jumpsuit --

1 A Red jumpsuit.

2 Q White hair?

3 A Yep.

4 Q Okay. And if you could just describe in a little more
5 detail for the Court, how the Defendant explained firing these
6 shots at the victim?

7 A So the Defendant made statements to the Detective and I on
8 Monday, that he came out to his porch the third time after
9 hearing noise that night. There was two other times; didn't
10 see anything. The third time he came out, he saw a shadowy
11 figure by his camper-trailer -- or by his deceased mother's
12 camper-trailer that is adjacent to the garden and the porch.
13 The shadowy figure crouched down. At that point, he stated he
14 feared that he was in danger. When asked if that shadowy
15 figure made any movements toward him or had anything in their
16 hand, stated that he did not see anything, nor did they move
17 towards him. So he fired a shot to the left of the camper-
18 trailer. After the first shot, the shadowy figure moved in
19 that direction and he fired -- continued to fire shots in that
20 same general direction.

21 Q So the subsequent shots that were fired were in the
22 direction in which the figure was moving?

23 A Correct.

24 MR. BRAUN: No further questions.

25 THE COURT: All right. Cross exam?

1 **CROSS EXAMINATION**

2 **BY MR. JAMESON:**

3 Q After talking to the -- what was the name of the Detective
4 from Espanola Police Department?

5 A Byron Abata (phonetic).

6 Q Abata, okay. You obviously talked to Mr. Abata, right?

7 A Over the phone briefly on Monday.

8 Q So Mr. Abata told you shortly after the event that
9 Mr. Smith called 911 to report that somebody had been shot on
10 his property?

11 A A tenant of his suggested he called 911. He said he was
12 going to. And that's when he called 911 and talked to Dispatch
13 at that point.

14 Q So Mr. Smith called 911 to report that someone was shot?

15 A As far as I know.

16 Q Okay. And that was soon after, as far as we know, the
17 incident where somebody was shot?

18 A I believe so, based on the time of events.

19 Q And Mr. Abata told you that when he arrived that Mr. Smith
20 left the firearm on the ground and was away from the firearm,
21 and the firearm was not present on his body or in his vicinity
22 when the Police Officer arrived?

23 A Correct.

24 Q And Detective Abata told you that after properly being
25 Mirandized that Mr. Smith agreed to speak with them?

1 A Correct.

2 Q And he told you essentially the things that you just
3 testified to; essentially? I mean I'm not --

4 A Yes, sir.

5 Q -- picking over.

6 A We didn't discuss it. I read his report.

7 Q Did Detective Abata tell you that Mr. Smith was
8 cooperative?

9 A We didn't discuss that.

10 Q Did you have any information that Mr. Smith attempted to
11 flee?

12 A Per the report, I did not see any of that information.

13 Q Do you have any knowledge from any source that Mr. Smith
14 attempted to flee the scene after the incident?

15 A Per the report, I have no knowledge to suggest that.

16 Q Okay. Have you been to the -- physically the scene of
17 whatever happened last Saturday?

18 A I have not yet.

19 Q Okay. Is it your -- it's your understanding, isn't it,
20 that this is what used to be a working motel, that's now semi-
21 working?

22 A From what Mr. Smith told me, it's still an operational
23 motel; that's all I know.

24 Q And it's located in along the main business district in
25 Espanola, New Mexico?

1 A That I am not aware of.

2 Q Okay. Do you have any reason to believe it's not?

3 A I do not.

4 Q The reason I ask you this is, oftentimes, when we deal
5 with Indian country, we're dealing with places geographically
6 that aren't cities or communities that we could drive through
7 on our way, correct?

8 A Correct.

9 Q Okay. So it's a little bit different slant on Indian
10 country than oftentimes we deal with. So you interviewed
11 Mr. Smith, I believe it was this past Monday, correct?

12 A Correct.

13 Q And after properly Mirandizing him, he waived his rights?

14 A Yes.

15 Q And he spoke with you?

16 A Yes.

17 Q Was he cooperative?

18 A Yes.

19 Q Did he -- did you encounter any problems in your interview
20 with him?

21 A No.

22 Q Did he appear to be deceptive, just in your impression,
23 when you were speaking with him?

24 A No.

25 Q Did you do any background investigation into who he is or

1 what he might have been involved in in his life?

2 A We ran and NCIC check; and didn't identify -- the only
3 criminal history we identified was an intoxicating driving
4 record several decades ago.

5 Q That was in 1975?

6 A Yes.

7 Q Are you aware that there are other people who live on the
8 property where the incident took place?

9 A I believe Mr. Smith told me there was three tenants of his
10 at the time.

11 Q And did he tell you his brother also lives in a residence
12 that's on the same property?

13 A Yes.

14 Q And Mr. Smith told you he's lived there since he was 15
15 years old?

16 A He said he's moved around a bit out of New Mexico, so I'm
17 not sure if he's been there. From my understanding, he was not
18 there the entirety of the time, but he has been there recently.

19 Q And it's to your best knowledge that Mr. Smith's
20 approximately 68 years old?

21 A Correct.

22 Q During the course of your interview, Mr. Smith told you
23 that starting last November that his -- the property had been
24 the scene of a number of break-ins or attempted break-ins;
25 didn't he?

1 A Yes, sir.

2 Q And he told you at least one of those incidents within the
3 last six months that he was involved with a physical
4 altercation with one of the people who was attempting to break
5 in on his property?

6 A Yes, sir

7 Q He told you that on Friday night or Saturday morning when
8 this incident happened that he was scared?

9 A Yes, sir.

10 MR. JAMESON: Nothing further.

11 THE COURT: Redirect?

12 MR. BRAUN: No, thank you, Your Honor.

13 THE COURT: Okay. Would Government like to make any
14 argument, or you would just rest on the testimony?

15 MR. BRAUN: We would rest on the testimony.

16 THE COURT: Mr. Jameson?

17 MR. JAMESON: We have no argument at this time.

18 THE COURT: (Indisc.) Witness be excused?

19 MR. BRAUN: Yes, Your Honor.

20 THE COURT: All right, you can go ahead and step
21 down, sir. Do you have other witnesses?

22 MR. BRAUN: No, Your Honor.

23 THE COURT: All right. Any witnesses, Mr. Jameson?

24 MR. JAMESON: No, sir.

25 THE COURT: Okay. With respect to the probable cause

1 determination, I am finding that there's probable cause to
2 support the criminal complaint. There is sufficient evidence
3 that this did occur in Indian country.

4 I know it's a difficult area in that part of the
5 state. But the Agent did testify that he had checked, he
6 talked to the Governor, that this is -- part of that area is
7 Indian country, or that part of the Espanola region is Indian
8 country, that the victim in this case is also Indian; and the
9 evidence that we have thus far is that Mr. Smith isn't.

10 And so the jurisdictional elements, at least there's
11 probable cause to support the jurisdictional elements at USC
12 1152. With regard to the charge in this case, based on the
13 alleged statements that Mr. Smith made, there is probable cause
14 to believe that he is the person that shot the victim in this
15 case.

16 I understand what the defenses may be going forward;
17 but at least at this point, there's probable cause to support
18 each of the elements related to 18 United States Code; Section
19 1111. So I will find probable cause based on the Agent's
20 testimony here today.

21 I know we have an issue with detention. And my
22 understanding is that Mr. Smith hasn't been interviewed. Let
23 me ask if this would work.

24 I've got a proposal; it would be, we've got some
25 change of pleas. Whether -- I was going to see if it works for

1 everybody, including Pretrial Services, if Mr. Smith could do
2 an interview while we're doing the change of pleas; and then we
3 could see what information we have after that.

4 And then if we have enough -- if Pretrial Services
5 feels comfortable making an oral report, we can go forward; if
6 they don't, then we can cross that bridge when we get there and
7 see what the next steps should be.

8 **MR. JAMESON:** From our point of view, that would be
9 completely acceptable.

10 **THE COURT:** All right. Any objection in doing that,
11 Mr. Braun?

12 **MR. BRAUN:** No, Your Honor.

13 **THE COURT:** All right. Would Pretrial Services be
14 able to do that while we're doing these change of pleas?

15 **PRETRIAL SERVICES:** Yes, Your Honor. If we can ask
16 some Marshals to bring him down --

17 **THE COURT:** Okay.

18 **PRETRIAL SERVICES:** -- we can interview him right
19 away.

20 **THE COURT:** Okay. Will the Marshals be able to do
21 that? And if you need a recess, we can take a recess while you
22 move --

23 **MARSHAL:** No, that's --

24 **THE COURT:** -- him down and come back in.

25 **MARSHAL:** -- it'll be find, Judge.

1 **THE COURT:** Okay.

2 **MARSHAL:** (Indisc.) [9:50:44].

3 **THE COURT:** All right. Thank you. Let's go ahead
4 and try to do that.

5 **MR. JAMESON:** Just for (indisc.) purposes, would you
6 guess this at least an hour from now?

7 **THE COURT:** Yeah. I think that it could be before.
8 It could be sooner than an hour. But if you have somewhere to
9 be or things to do, we can just plan on it being at least an
10 hour. And if we finish earlier, I can could come down. I
11 don't think it would be --

12 **MR. JAMESON:** I'm available. What I meant is I
13 haven't really been to my office this morning in any
14 significance. If I could go back to my office, I'll head back
15 here in about 45 minutes, and we'll see how we're doing, if
16 that's acceptable with you.

17 **THE COURT:** Okay. That's fine. Does that work for
18 you, Mr. Braun?

19 **MR. BRAUN:** Yes, Your Honor.

20 **THE COURT:** Okay. That -- I think that makes more
21 sense than trying to come back again later this afternoon or
22 doing something. We have the Agents here. And I'm sure
23 Mr. Braun can find a way to do some work if he's waiting around
24 while we're in a recess.

25 **MR. BRAUN:** I'll keep myself busy.

1 **THE COURT:** All right. Sounds great.

2 **MR. JAMESON:** Thank you, Judge.

3 **THE COURT:** I know we've got his change of plea set.
4 The Attorneys need to talk to the Client. Let me ask, how much
5 time do you think you need, Counsel?

6 **MR. JAMESON:** No more than five minutes, Your Honor.

7 **THE COURT:** Okay. Let's go ahead and take a five-
8 minute recess. That'll give Counsel a chance to talk to his
9 Clients. Then we'll come back and handle these. All right?

10 **MR. JAMESON:** Thank you, Judge.

11 **THE COURT:** Thank you.

12 **(Recess taken from 9:51 a.m. to 10:57 a.m.)**

13 **THE COURT:** All right. You can go ahead and step up
14 next to your Attorney there, Mr. Smith. All right. And
15 Counsel, go ahead and enter their appearances.

16 **MR. BRAUN:** James Braun on behalf of the United
17 States.

18 **MR. JAMESON:** Tom Jameson on behalf of Mr. Smith.

19 **THE COURT:** All right. So has Mr. Smith had a chance
20 to be interviewed by Pretrial Services now?

21 **MR. JAMESON:** He has, Your Honor. I've spoken with
22 Mr. Galaz. And I booked -- well, Mr. Galaz can speak for
23 himself.

24 **THE COURT:** Okay. Yes, Anthony Galaz with Pretrial
25 Services. Yes, what's your recommendation?

1 **MR. GALAZ:** Your Honor, I did talk with Mr. Smith. I
2 also collaborated some personal with his brother. At this
3 point, I do think there are conditions that can be fashioned to
4 mitigate a risk of non-appearance and danger to the community.

5 And at this point, our recommendation would be to
6 release him to (indisc.) La Posada halfway house with Pretrial
7 supervision. I do think I'm not comfortable at this point
8 recommending he go back home. He is -- he does own several
9 firearms.

10 Just at this point, (indisc.) comfortable (indisc.)
11 but I do think he could be released to La Posada and we could
12 supervise him, and then sort of get him stabilized, and then
13 maybe have him go through an assessment, make sure there's no
14 certified mental health or substance issues.

15 **THE COURT:** All right, thank you. Mr. Braun?

16 **MR. BRAUN:** We have no objection to that, Your Honor.

17 **THE COURT:** Okay. So my inclination, Mr. Jameson --
18 and of course I'll let you address anything; but just so you'll
19 know what my inclination is, is to go ahead and release him to
20 third-party custody at a halfway house for now.

21 I know we're doing this on a short timeline. So it
22 sounds like Pretrial Services might need to get us some more
23 information. If Pretrial Services gathers that additional
24 information and the recommendation changes, so that Mr. Smith
25 could be released to something other than the halfway house, I

1 would go ahead and consider that as well at that time.

2 But my inclination today would be to release him to
3 the halfway house, based on the recommendation of Pretrial
4 Services.

5 **MR. JAMESON:** Your Honor, we don't object to that.
6 Sure as you might guess, it's Mr. Smith's hope that he can go
7 back home. (glitch in audio) to do this today, but I have done
8 this too long.

9 I understand that no one in this system has actually
10 seen the residence; nobody's walked through it. There are some
11 firearms there. I think it's reasonable under the
12 circumstances for Pretrial to work with him a little bit for us
13 to have the firearms removed from the home by his brothers and
14 give Pretrial an opportunity to look at the residence before
15 they can weigh in on whether they think it's an appropriate
16 residence or not.

17 We're intending to come back and see once Pretrial
18 has had an appropriate amount of time to think about this and
19 investigate it. But at this point, we'd be happy to be -- for
20 your recommendation or your release to the halfway house until
21 something else can be fashioned.

22 **THE COURT:** Okay. That's what I'll do. And just for
23 the record, I will note that the factors I have to consider,
24 the nature of the offense, it's clearly a serious offense. But
25 also, hearing the testimony this morning and looking at the

1 complaint, it's a second -- it's a different second-degree type
2 of murder charge in the sense that the circumstances are much
3 different than what I normally see with this type of charge.

4 So I'm considering that as well. Obviously, it's a
5 violent crime that's being charged. With regards to the weight
6 of the evidence, there certainly was enough for probable cause.
7 I understand that Mr. Smith may have some defenses as well
8 going forward.

9 But looking at the Defendant's personal history,
10 there was just one misdemeanor conviction back in 1975. There
11 wasn't anything about his personal history that created
12 concerns for me. He seems to have strong ties to the
13 community. Looking through all the factors that I look at,
14 that notates in his favor.

15 And so I do think that it's appropriate in the least
16 restrictive conditions at this point to assure his appearance
17 and to mitigate risk of danger of the community, he's released
18 to the halfway house. And so I'll do that.

19 And if there are different circumstances, or once
20 Pretrial Services is able to do some more investigation, if
21 you'd like to file another motion, or if you work something out
22 with the Government, then we can look at that at that point.
23 All right?

24 **MR. JAMESON:** Thank you, Judge.

25 **THE COURT:** All right. I don't have anything else.

1 Anything else from you, Mr. Jameson? Okay.

2 **MR. JAMESON:** I have nothing.

3 **THE COURT:** From the United States?

4 **MR. BRAUN:** No.

5 **THE COURT:** Okay. That's all we have then. I don't
6 think we have any other cases right now, do we Kim? I think
7 that's it. So we'll be in recess. Thank you very much.

8 **MR. JAMESON:** Thank you.

9 **THE COURT:** Thank you.

10 **(Proceeding adjourned at 11:02 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is positioned above a horizontal line.

May 18, 2018

TONI HUDSON, TRANSCRIBER